

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY )	
AVERAGE WHOLESALE PRICE )	MDL NO. 1456
LITIGATION )	Civil Action No. 01-12257-PBS
)	
)	Hon. Patti B. Saris
THIS DOCUMENT RELATES TO THE )	
AMENDED MASTER CONSOLIDATED )	Chief Mag. Judge Marianne B. Bowler
CLASS ACTION )	
)	

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**TRACK TWO DEFENDANTS' MOTION TO RENEW THEIR MOTION TO  
COMPEL (DOCKET ENTRY NO. 2162) DIRECTED TO  
THIRD-PARTY NATIONAL HERITAGE INSURANCE COMPANY IN ITS CAPACITY  
AS THE MEDICARE PART B CARRIER FOR MASSACHUSETTS AND  
REQUEST FOR HEARING ON MAY 9, 2006**

Defendant Aventis Pharmaceuticals Inc. on behalf of itself and all other Track Two Defendants, hereby reasserts and renews the motion to compel (Docket Entry No. 2162) to the extent that it was and is directed to third-party National Heritage Insurance Company (“NHIC”) to produce documents responsive to the subpoena served upon it on October 27, 2005. The Track Two Defendants also hereby request that this Motion to Compel be scheduled for hearing on May 9, 2006, or as soon thereafter as possible.

As grounds for this Motion, the Track Two Defendants state as follows. NHIC contacted counsel for the Track Two Defendants on March 28, 2006, on what was literally the eve of the previously scheduled hearing on the Motion to Compel. At that time, NHIC represented that it would produce various categories of documents to the Track Two Defendants. After coming to a good faith agreement with NHIC, the Track Two Defendants agreed to withdraw their Motion to Compel, with the understanding that such Motion would be renewed if NHIC did not fulfill its

discovery obligations. Despite the Track Two Defendants' repeated and protracted efforts over the past four weeks, NHIC has failed to live up to even its agreed upon obligations and has, instead, continued its campaign of obfuscation and foot-dragging. See, e.g., the April 19, 2006, April 21, 2006 and April 28, 2006 letters and April 28, 2006 email attached as Exhibits A, B, C and D to the Declaration of Michael DeMarco (filed herewith). As a result, the Track Two Defendants are forced to renew their Motion to Compel (Docket Entry No. 2162) as it relates to the October 27, 2005 subpoena served on NHIC and they respectfully request that this Court schedule this renewed Motion to Compel for hearing on May 9, 2006 or as soon thereafter as possible.

/s/ Michael DeMarco  
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*Attorneys for Defendant  
Aventis Pharmaceuticals Inc. on behalf of  
the Track Two Defendants*

Dated: April 28, 2006

**LOCAL RULE 7.1(A)(2) AND 37.1 CERTIFICATION**

Pursuant to Local Rules 7.1(a)(2) and 37.1, the undersigned counsel hereby certifies that counsel for Defendants conferred with counsel for Third-Party National Heritage Insurance Company in an attempt to narrow the areas of disagreement. The parties were unable to resolve the instant dispute.

/s/ Michael DeMarco \_\_\_\_\_  
Michael De Marco

**CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2006, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Michael DeMarco \_\_\_\_\_  
Michael De Marco